

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOE NATHAN JACKSON,

Plaintiff,

Case No. 2:14-cv-80

v.

Honorable Gordon J. Quist

DANIEL HEYNS,

Defendants.

OPINION

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff leave to proceed *in forma pauperis*, and Plaintiff has paid the initial partial filing fee. Under the Prison Litigation Reform Act, PUB. L. NO. 104-134, 110 STAT. 1321 (1996), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, Plaintiff's action will be dismissed for failure to state a claim.

Factual Allegations

Plaintiff Joe Nathan Jackson, a state prisoner currently confined at the Chippewa Correctional Facility (URF), filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983

against Defendants MDOC Director Daniel Heyns, Warden Unknown Harwood, Deputy Warden Kathy Olson, Assistant Resident Unit Supervisor J. Meyers, Inspector J. Wilcox, Corrections Officer Unknown Johnson, and Unknown Parties #1 - #6.

In Plaintiff's complaint, he alleges that while he was confined at the Kinross Correctional Facility (KCF) on June 13, 2013, Plaintiff arrived at his job assignment as yard crew foreman sometime between 1:30 pm and 1:45 pm. Plaintiff was about to enter the yard crew shack when he was suddenly stabbed in the back three times. Plaintiff turned to face his attackers and was stabbed in the upper right portion of his head. Plaintiff saw what appeared to be a lot of arms swinging and stabbing at him, so Plaintiff threw his hands in front of his face and stomach to try and protect himself. Plaintiff was stabbed in the right forearm and fell on his back. Plaintiff began to kick at his attackers and noticed that there were at least three individuals involved in the attack. Plaintiff states that the attack ceased as suddenly as it had begun.

After lying on the floor for a few minutes, Plaintiff got up and noticed all the blood on the floor. Plaintiff made his way back to the housing unit, leaving a trail of blood on the floor. When Plaintiff arrived in D-Block, a corrections officer ordered Plaintiff to stop and called the yard officer to come and take Plaintiff to Health Care. Once Plaintiff arrived in Health Care, the nurses observed the amount of blood on Plaintiff and stated that Plaintiff needed to be taken to an outside hospital. However, the officer present told the nurses to first attempt to suture Plaintiff's wounds. Plaintiff was instructed to remove his shoes and clothing, revealing that Plaintiff had been stabbed in the legs, as well as the rest of his body. In all, Plaintiff had been stabbed fifteen times and required seventy-six stitches. While Plaintiff's wounds were being stitched up, he was ordered to hold a towel around one of his legs to staunch the bleeding. Plaintiff states that all of his wounds were sutured.

Following his treatment in Health Care, Plaintiff was placed in administrative segregation in a cell with six other prisoners, four of which had also been stabbed. A couple of days after the stabbing, Plaintiff began to show signs of infection in his right leg, which became swollen and hot to the touch. The doctor at KCF prescribed Plaintiff several forms of strong medication for his wounds and his pain. Plaintiff attempted to file a grievance while in administrative segregation at KCF, but was told that no forms were available.

On July 3, 2013, Plaintiff was transferred to the Alger Maximum Correctional Facility (LMF), where he filed a grievance. On July 9, 2013, Plaintiff saw Dr. George Bonefeld, who examined Plaintiff's legs. Dr. Bonefeld told Plaintiff that the wounds on his legs were caused by his veins being cut and placed Plaintiff on "Ibuprofen" three times a day and Motrin two times a day in order to treat Plaintiff's pain and nerve damage. Dr. Bonefeld also prescribed a tech-hold sleeve compression device for Plaintiff's legs. Dr. Bonefeld told Plaintiff that it would take six months to a year before his legs would heal. Plaintiff states that his legs continue to be swollen and that he has permanent scars on his body.

Plaintiff contends that Defendants are deliberately indifferent to gang violence, which establishes conditions which encourage inmate-on-inmate stabbings and violence. Plaintiff states that Defendants' conduct violated his rights under the Eighth and Fourteenth Amendments and seeks compensatory and punitive damages, as well as declaratory and injunctive relief.

Discussion

I. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails "'to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While

a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 549 (6th Cir. 2009). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

Plaintiff states that Defendants violated his Fourteenth Amendment rights. The Court construes this as a substantive due process claim. “Where a particular [a]mendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that [a]mendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing such a claim.” *Albright v. Oliver*, 510 U.S. 266, 266 (1994) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)) (holding that the Fourth Amendment, not substantive due process, provides the standard for analyzing claims involving unreasonable search or seizure of free citizens, and the Eighth Amendment provides the standard for such searches of prisoners)). If such an amendment exists, the substantive due process claim is properly dismissed. *Heike v. Guevara*, 519 F. App’x 911, 923 (6th Cir. 2013).

In this case, there is a specific constitutional amendment that applies to Plaintiff’s claims. The Eighth Amendment provides an explicit source of constitutional protection to Plaintiff concerning his failure to protect claims and his medical claims. *See Dodson v. Wilkinson*, 304 F. App’x 434, 438 (6th Cir. 2008) (because the Eighth Amendment supplies the explicit textual source of constitutional protection for claims governing a prisoner’s health and safety, the plaintiff’s substantive due process claim was subject to dismissal). Therefore, the Court will dismiss Plaintiff’s Fourteenth Amendment claims.

As noted above, Plaintiff claims that Defendants violated his rights under the Eighth Amendment. The Eighth Amendment imposes a constitutional limitation on the power of the states to punish those convicted of crimes. Punishment may not be “barbarous” nor may it contravene society’s “evolving standards of decency.” *Rhodes v. Chapman*, 452 U.S. 337, 345-46 (1981). The Amendment, therefore, prohibits conduct by prison officials that involves the “unnecessary and wanton infliction of pain.” *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987) (per curiam) (quoting

Rhodes, 452 U.S. at 346). The deprivation alleged must result in the denial of the “minimal civilized measure of life’s necessities.” *Rhodes*, 452 U.S. at 347; *see also Wilson v. Yaklich*, 148 F.3d 596, 600-01 (6th Cir. 1998). The Eighth Amendment is only concerned with “deprivations of essential food, medical care, or sanitation” or “other conditions intolerable for prison confinement.” *Rhodes*, 452 U.S. at 348 (citation omitted). Moreover, “[n]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment.” *Ivey*, 832 F.2d at 954.

In order for a prisoner to prevail on an Eighth Amendment claim, he must show that he faced a sufficiently serious risk to his health or safety and that the defendant official acted with “‘deliberate indifference’ to [his] health or safety.” *Mingus v. Butler*, 591 F.3d 474, 479-80 (6th Cir. 2010) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (applying deliberate indifference standard to medical claims)); *see also Helling v. McKinney*, 509 U.S. 25, 35 (1993) (applying deliberate indifference standard to conditions of confinement claims).

Inmates have a constitutionally protected right to personal safety grounded in the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). Thus, prison staff are obliged “to take reasonable measures to guarantee the safety of the inmates” in their care. *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984). To establish a violation of this right, Plaintiff must show that Defendants were deliberately indifferent to the Plaintiff’s risk of injury. *Walker v. Norris*, 917 F.2d 1449, 1453 (6th Cir. 1990); *McGhee v. Foltz*, 852 F.2d 876, 880-81 (6th Cir. 1988). While a prisoner does not need to prove that he has been the victim of an actual attack to bring a personal safety claim, he must at least establish that he reasonably fears such an attack. *Thompson v. County of Medina, Ohio*, 29 F.3d 238, 242-43 (6th Cir. 1994) (holding that plaintiff has the minimal burden

of “showing a sufficient inferential connection” between the alleged violation and inmate violence to “justify a reasonable fear for personal safety.”)

In this case, Plaintiff fails to allege any specific facts showing that any of the named Defendants were personally aware of a risk that he would be stabbed and that they failed to act in order to protect him. Plaintiff’s contention that there was a pervasive risk of prisoners being stabbed is entirely conclusory. Therefore, Plaintiff’s failure to protect claims are properly dismissed.

Plaintiff also appears to be claiming that the treatment he received after being stabbed violated the Eighth Amendment. A claim for the deprivation of adequate medical care has an objective and a subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To satisfy the objective component, the plaintiff must allege that the medical need at issue is sufficiently serious. *Id.* In other words, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm. *Id.* The objective component of the adequate medical care test is satisfied “[w]here the seriousness of a prisoner’s need[] for medical care is obvious even to a lay person.” *Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 899 (6th Cir. 2004). If, however the need involves “minor maladies or non-obvious complaints of a serious need for medical care,” *Blackmore*, 390 F.3d at 898, the inmate must “place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment.” *Napier v. Madison Cnty.*, 238 F.3d 739, 742 (6th Cir. 2001).

The subjective component requires an inmate to show that prison officials have “a sufficiently culpable state of mind in denying medical care.” *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000) (citing *Farmer*, 511 U.S. at 834). Deliberate indifference “entails something more than mere negligence,” *Farmer*, 511 U.S. at 835, but can be “satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Id.*

Under *Farmer*, “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837.

Not every claim by a prisoner that he has received inadequate medical treatment states a violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105. As the Supreme Court explained:

[A]n inadvertent failure to provide adequate medical care cannot be said to constitute an unnecessary and wanton infliction of pain or to be repugnant to the conscience of mankind. Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.

Id. at 105-06 (quotations omitted). Thus, differences in judgment between an inmate and prison medical personnel regarding the appropriate medical diagnoses or treatment are not enough to state a deliberate indifference claim. *Sanderfer v. Nichols*, 62 F.3d 151, 154-55 (6th Cir. 1995); *Ward v. Smith*, No. 95-6666, 1996 WL 627724, at *1 (6th Cir. Oct. 29, 1996). This is so even if the misdiagnosis results in an inadequate course of treatment and considerable suffering. *Gabehart v. Chapleau*, No. 96-5050, 1997 WL 160322, at *2 (6th Cir. Apr. 4, 1997).

The Sixth Circuit distinguishes “between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment.” *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). If “a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law.” *Id.*; see also *Rouster v. Saginaw Cnty.*, 749 F.3d 437, 448 (6th

Cir. 2014); *Perez v. Oakland County*, 466 F.3d 416, 434 (6th Cir. 2006); *Kellerman v. Simpson*, 258 F. App'x 720, 727 (6th Cir. 2007); *McFarland v. Austin*, 196 F. App'x 410 (6th Cir. 2006); *Edmonds v. Horton*, 113 F. App'x 62, 65 (6th Cir. 2004); *Brock v. Crall*, 8 F. App'x 439, 440 (6th Cir. 2001); *Berryman v. Rieger*, 150 F.3d 561, 566 (6th Cir. 1998). “Where the claimant received treatment for his condition, as here, he must show that his treatment was ‘so woefully inadequate as to amount to no treatment at all.’” *Mitchell v. Hininger*, No. 13-5315, slip op. at 4-5 (6th Cir. Apr. 4, 2013) (quoting *Alsbaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011)).

In this case, Plaintiff alleges that he was taken to Heath Care and received seventy-six stitches. Plaintiff appears to be claiming that he should have been sent to the hospital for treatment, rather than being stitched up in the prison health care setting. However, it appears from Plaintiff's allegations that suturing his wounds was a matter of some urgency. Therefore, it is not clear that sending him to the hospital to receive his stitches would have been a better option. Plaintiff also states that he received medications to assist with healing and pain relief following the stabbing. With regard to Plaintiff's claim that he suffers continued scarring and swelling to his legs, he concedes that Dr. Bonefeld indicated that this was due to the nature of the wounds and that it would take six months to a year before his legs would heal. Based on Plaintiff's allegations, the Court concludes that the treatment he received was not “so woefully inadequate as to amount to no treatment at all.” *Alsbaugh*, 643 F.3d at 169. Therefore, Plaintiff's Eighth Amendment claims are properly dismissed.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's action will be dismissed for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c).

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the \$505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A Judgment consistent with this Opinion will be entered.

Dated: October 10, 2014

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE